

REMARKS

The Examiner is thanked for previously identifying claim 17 as being allowable.

The Applicant traverses the Examiner's holding of a Non-Responsive Amendment based on the following: the Amendment was and is Responsive under 37 C.F.R. 1.111-1.112, claims 14 and 18 are not amended, and there is antecedent basis in the originally filed specification for the subject matter in claims 14 and 18.

I. Purported Non-Compliant Amendment is, in fact, Compliant

In the Notice of Non-Responsive Amendments, the Examiner states that "Applicant failed to respond to the rejection under 35 U.S.C. 11, First Paragraph specified in 11/16/2006."

To overcome a holding of Non-Responsiveness, the Applicant may show that the Office Action Response addressed the point purportedly unaddressed by the Examiner. 37 C.F.R. 1.111-1.112.

In fact, page three of the Office Action Response is exactly a Response to what the Examiner states is missing:

"Rejections Based on 35 USC 112

Claims 12-18 stand rejected under 35 USC 112. In particular, in claim 12, the phrase "the vacuum device" lacks antecedent basis. The Applicant has amended claim 12 to state "the suction device." Claims 14 and 18 stand rejected based on the representation that the specification lacks sufficient description to enable one of ordinary skill in the art to practice the invention. It is respectfully noted that the claims form part of the specification, and that one of ordinary skill in the art would understand how to make and use the invention upon reading the specification in its entirety. Otherwise, there are not specific rejections articulated with respect to

claims 13, or 15-17. Accordingly, it is respectfully requested that the rejections to the claims based on 35 USC 112 be withdrawn.” [emphasis mine].

This is an unambiguous response to the Examiner’s rejection of claims 14 and 18 based on 35 U.S.C. 112. Although the Examiner may disagree with the *content* or *substance* of the Response, it cannot be said that the content is “Non-Responsive.” The proper path for the Examiner, if he disagrees with the substance of the response it to make the next rejection “final” so that the Applicant may by right appeal the opinion of the Examiner or amend the specification as provided by Ex Parte Porter, discussed below. Thus, the holding of a Non-Responsive Amendment should be withdrawn.

The Claims of Which the Examiner Complains are Unamended

The holding of a Non-Responsive Amendment specifically on the grounds that claims 14 and 18 are lacking seems to necessitate that the claims, which have been pending for over three years, are being Amended. In fact the claims 14 and 18 are unamended and Original. Accordingly, the holding of a Non-Responsive Amendment should be withdrawn.

There is Antecedent Basis for the Subject Matter in Claims 14 and 18

Again, Claims 14 and 18 stand rejected based on the mere accusation that the specification lacks sufficient description to enable one of ordinary skill in the art to practice the invention. The claims form part of the specification [*Ex parte Porter*, 25 USPQ2d 1144, 1146 (B.P.A.I. 1992) (citing *In re Anderson*, 471 F.2d 1237, 176 USPQ 331 (C.C.P.A. 1973)) “*an original claim is part of the disclosure at the time of filing*”; *Bocciarelli v. Huffman*, 232 F.2d 647 (C.C.P.A. 1956); and *In re Sasmussen*, 650 F2d 1212 (C.C.P.A. 1981)], and that one of ordinary skill in the art would understand how to make and use the invention upon reading the specification in its entirety. Accordingly, it is respectfully requested that the rejections to the claims based on 35 USC 112 be withdrawn.

Conclusion

Now pending for over four years, the last year has been one of superfluous delays and unnecessary procedural gamesmanship. The issues raised in the last year—all of them—could have been addressed in a single ten-minute phone call. Rather than using Dr. Vine's Patent Applications for academic exercises to see how an Applicant will respond to the latest USPTO seminar or Memo, the Examiner should be respectful of the Applicant's time and expense.

Having shown that the prior-submitted Amendment and Remarks were responsive, the Examiner is requested to withdraw the holding of a Non-Responsive Amendment and move the application to allowance.

If the Examiner has any other matters which remain, the Examiner is encouraged to contact the under signed attorney to resolve these matters by Examiners Amendment where possible.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'S. W. Thrasher', written in a cursive style.

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